

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 26 OF 2007

SHRI LAURENCE FRANCIS, BARDEZ,
GOA.

... Appellant

Versus

SMT. CELINA LAURENCE FRANCIS ALIAS
MICHAEL A. CELINA VAZ

... Respondent

Mr. S. D. Lotlikar, Senior Advocate with Ms. Sapna Mordekar, Advocate for the Appellant.

Mr. M. B. Da Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 29th November, 2007

ORAL ORDER

Heard learned Senior Counsel on behalf of both parties.

This is plaintiff's second appeal and is directed against Judgment dated 3-3-2006 of the learned Additional District Judge, Panaji, dismissing the suit filed by the plaintiff for divorce, on the ground of cruelty under Article 4(4) of the Law of Divorce.

The plaintiff and the defendant fell in love and got married on 13-8-1987. Of the said marriage they have one son by name Leon/DW2 born on 16-3-1983. Both the parties resided at Ponda from the year 1995 onwards till about 27-1-1999 when the plaintiff along with his parents came to reside at Verem in the house of one Dhume as a tenant. The defendant came to the plaintiff's new residence on 7-2-1999 accompanied by about 7 to 8 persons and spent the night with the plaintiff and apparently their relations were very good on that night. The defendant

who was working as L.D.C. in G.M.C. went to work on the next day and as per the plaintiff she was told to return back but she did not.

The plaintiff then filed the suit on 30-12-1999 and in support of his claim examined 4 witnesses including his own father/PW4. The defendant examined 5 witnesses.

The learned trial Court observed that cruelty on the part of the defendant was writ large by the evidence brought by the plaintiff. The learned trial Court further held that the evidence led by the defendant did not advance her case, as spoken to by her, in the written statement. The learned trial Court concluded that the evidence led by the defendant was absolutely nil. The learned trial Court therefore concluded that the plaintiff had proved his case against the defendant.

The defendant having filed the appeal before the District Court, the learned Additional District Judge observed that the learned trial Judge had not discussed any evidence, for him to have come to the conclusion that the defendant had created a situation wherein the plaintiff could not be expected to live as her husband. The learned Additional District Judge, as regards letters sought to be produced by the plaintiff, observed that the plaintiff had led no evidence to establish that the said letters were in the handwriting of the defendant and therefore the plaintiff's contention that those anonymous letters alleging that the plaintiff was having extra marital relation with different women was not established.

With the assistance of learned Senior Counsel, I have perused the Judgments of both the Courts below. The learned Senior Counsel on behalf of the Plaintiff submits that the learned Additional District Judge discarded the evidence of the defendant and only considered the evidence of the plaintiff and did not accept the same because the instances of ill treatment were not mentioned in the plaint. Learned Senior Counsel

therefore submits that the learned Additional District Judge has discarded material evidence led by the parties. On the other hand, learned Senior Counsel on behalf of the defendant submits that the observations of the learned Additional District Judge that details of instances of ill treatment ought to have been mentioned in the plaint cannot be faulted. Learned Senior Counsel submits that in case any particular incident had taken place in the presence of a person it would have been normal for the plaintiff to have stated that such incident had taken place in the presence of that particular person. Learned Counsel on behalf of the defendant further submits that the learned Additional District Judge on correct appreciation of evidence has come to the conclusion that the plaintiff had failed to prove the plea of ill treatment set up by him and therefore there is no scope for this Court to interfere with the Judgment of the learned Additional District Judge, in second appeal.

There is no doubt that there is some variation between the pleading and proof sought to be adduced by the defendant as to why she did not return back after she went to attend to her work on 7th February, 1999. However, that discrepancy certainly does not help the plaintiff to prove the case of ill treatment or cruelty set out by the plaintiff. The learned trial Court on a superficial reading of evidence decreed the suit of the plaintiff as if to say if the plaintiff brought 2 or 3 witnesses to support his case, that was sufficient, without testing their evidence on the anvil of probabilities. On the other hand, the learned Additional District Judge has not accepted the evidence of the plaintiff's witness for reasons set out in the Judgment and which in my opinion could not be faulted. Considering the evidence produced on behalf of the parties, in my view, the learned Additional District Judge has come to the right conclusion that the plaintiff had failed to prove cruelty on which he had based his suit for divorce. This is not a case where the Judgment of the learned Additional District Judge suffers from any perversity or non consideration of any material evidence.

Consequently, I find there is no merit in this appeal and the same is hereby dismissed.

N. A. BRITTO, J.

RD.